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April 5, 2006

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E. 06-26 – Residence Late Payment Charge

Dear Ms. Cottrell:

Enclosed for filing in the above-captioned matter is Verizon Massachusetts' Reply Comments.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara Anne Sousa".

Barbara Anne Sousa

Enclosure

cc: Carol M. Pieper, Esquire, Hearing Officer (4)
Michael Isenberg, Esquire, Director – Telecommunications Division
Andrew Kaplan, General Counsel
Judith F. Judson, Chairman
James Connelly, Commissioner
W. Robert Keating, Commissioner
Paul G. Afonso, Commissioner
Brian Paul Golden, Commissioner

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications
and Energy on its own motion as to the propriety of the
rates and charges set forth in the following tariff:
M.D.T.E. No. 10, filed with the Department on
February 3, 2006, to become effective on March 5, 2006,
by Verizon New England, Inc. d/b/a Verizon Massachusetts)

D.T.E. 06-26

VERIZON MASSACHUSETTS' REPLY COMMENTS

Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA"), is responding to the comments of various parties regarding Verizon MA's pending tariff for the introduction of a late payment charge ("LPC") for residence customers.¹ Those parties' comments are without merit and fly in the face of Department precedent and the regulatory regime it has found appropriate for the Massachusetts' telecommunications industry and Verizon MA. As discussed below, there cannot be serious question that Verizon MA's residence LPC tariff is in full compliance with the alternative form of regulation ("AFOR") plan adopted by the Department in D.T.E. 01-31.

In the AFOR, the Department granted Verizon MA the authority to change prices and the terms of services *in its discretion*— like all other carriers operating in the Commonwealth — except in limited circumstances. *See* D.T.E. 01-31 Phase II Order (April 11, 2003); *see also* AFOR Plan (approved June 6, 2003), at 1 and Attachments A and B. The parties' comments uniformly ignore the AFOR and instead ground many of their arguments in rate-of-return

¹ The following parties filed comments: the Office of the Attorney General ("Attorney General" or "AG"), the National Consumer Law Center (the "NCLC"), Action for Boston Community Development ("ABCD"), Citizens for Citizens, Inc. ("CFC"), and Action, Inc.

principles, which the Department abandoned over ten years ago and has not applied since in regulating Verizon MA. In addition, Verizon MA's proposed residence LPC is comparable to the late payment charges other telecommunications carriers impose in Massachusetts and is commercially reasonable. Accordingly, there is no basis for the Department to modify or deny this tariff. Rather, based on well-settled precedent, the Department should approve Verizon MA's proposed residence LPC tariff as filed.

ARGUMENT

A. Verizon MA's Residence LPC Tariff Is Authorized by the AFOR.

In the *DTE 01-31 Phase II Order*, the Department stated that its "statutory responsibility" is "to ensure that rates or common carrier communications services in Massachusetts are just and reasonable" in accordance with Mass. General Laws c. 159, sections 14, 17 and 20. *DTE 01-31 Phase II Order*, at 66. In determining whether the "just and reasonable" standard is met, the Department found that for retail business and non-basic residential services, "a continuation of pricing flexibility" based on market forces is appropriate. *Id.* at 85-86. No party has argued that Verizon MA's proposed tariff fails to meet any provision of the AFOR adopted in D.T.E. 01-31. Indeed, Verizon MA's proposed tariff is in full compliance with the AFOR and thus is just and reasonable and should be approved.

Various parties argue that the charge is not "cost based" or will result in the double recovery of costs because compensation for the carrying costs of late payments has been taken into account in Verizon MA's working capital requirement. AG Comments, at 2; ABCD Comments, at 3-6. Arguments such as these reflect rate-of-return principles that the Department has not used to regulate Verizon MA's operations for over a decade. Instead, the Department has properly let the market determine the prices carriers may charge and the terms of service.

Subjecting the LPC tariff to cost standards as these parties suggest would be a major reversal of Department precedent and would undermine the policies that underlie the AFOR.

B. The Residence LPC Tariff Is Not a General Rate Increase Under State Law.

In his comments, the Attorney General contends that the proposed residence LPC is a general rate increase under Mass. General Laws c. 159, sec. 20, and therefore, can be approved, if at all, only after a full investigation. AG Comments, at 1-2. The Attorney General made this identical claim in D.T.E. 01-31 when seeking to defeat the Department's proposal to grant Verizon MA pricing flexibility. The Department rejected the theory then and should do so again.

In its *DTE 01-31 Phase II Order*, the Department stated that:

we do not share the Attorney General's position that any increase in basic residential rates without a traditional cost of service study violates our regulatory goals or Massachusetts statutory requirements.

See D.T.E. 01-31 Phase II Order, at 69. The Department then reiterated its long-standing principle that:

a "general increase in rates" has been interpreted to mean an increase in the regulated company's overall revenues – *rather than an increase in a particular rate element* – which triggers the notice, hearing, and other obligations contained in G.L. c. 159, §20, pertaining to general rate increases.

Id. at 70, citing D.P.U. 94-50, *Price Cap Order* at 219-220 (1995) (emphasis added). The Department further found that "given that ... non-basic residential services have been subject to market based pricing since the Department's first rate re-balancing order (D.P.U. 89-300 (1990)), the Department recognizes that conducting an embedded cost of service study today for only one set of Verizon customers would be difficult and, more importantly, would not produce an economically rational result." D.T.E. 01-31 Phase II Order, at 70.

Consistent with these holdings, the Department has never found that a change to an individual rate element triggers rate case requirements. Indeed, the Department found in *DTE 01-31* that “non-dominant carriers have raised rates for particular services numerous times since 1985 without triggering the G.L. c. 159, §20 requirements for notice and a hearing.” *Id.* at 70 n.50. In particular, none of the residence LPC filings made by other Massachusetts telecommunications providers – such as, *inter alia*, Comcast, AT&T, and various independent telephone companies – triggered a Section 20 investigation. Therefore, it would be unwarranted and contrary to Department precedent to conduct a Section 20 investigation of Verizon MA’s residence LPC, as the Attorney General recommends here.

C. Verizon MA’s Residence LPC Tariff Is Comparable to Charges Imposed by Other Telecommunications Providers in Massachusetts.

Parties also contend that Verizon MA’s proposed tariff violates “public policy.” AG Comments, at 3-4; NCLC Comments, at 5-6; ABCD Comments, at 6-8. There is no basis for that argument. The Department has not prevented other telecommunications companies from applying late payment charges to residence customer accounts based on public policy grounds. Therefore, it would be unjust and unreasonable to bar Verizon MA from applying that same fee.

Late payment charges on consumer credit transactions are a standard commercial practice. Indeed, as noted above, the Department has approved residence LPCs by other telecommunications carriers.² The Department cannot treat Verizon differently in this regard than it has treated other carriers. In D.T.E. 01-31, the Department recognized that Chapter 159 of the Mass. General Laws “does not differentiate between dominant and non-dominant carriers,

² The Attorney General’s suggestion that Verizon MA does not need an LPC because it may simply disconnect a customer who has failed to pay in 30 days is disingenuous. Disconnection for failure to pay a single overdue bill would be inappropriate in most instances, and the Attorney General would likely be first in line to protest implementation of such a policy.

CLECs and ILECs, LECS and interexchange carriers, etc.” D.T.E. 01-31 Phase II Order, at 71-72. The Department therefore rejected the notion that, in determining whether rates are just and reasonable, it is “legally required to take certain measures in regulating Verizon, but not in regulating all other common carriers.” *Id.* at 72.

The Attorney General and the NCLC argue that the charges are against public policy as evidenced by the fact that gas and electric utilities are not allowed to assess late charges. AG Comments, at 3-4; NCLC Comments, at 6. However, the prohibition on gas and electric companies is a statutory one, and no similar provision applies to telecommunications carriers. If the General Court believed that such charges in the telecommunications industry were against public policy, it would have taken action.

The Attorney General also argues that the LPC tariff should be rejected because the proposed charge is higher than the LPC rate Verizon MA charges its business customers. AG Comments, at 2. Historically, rates charged to business customers are different than those charged residence customers not only in telecommunications but in other industries as well. The Attorney General also fails to point out that the application of the business LPC is decidedly different than the residence LPC. *See* DTE MA No. 10, Part A, Section 1.5.5.B.1 (describing that, for Business customers, all amounts outstanding 25 days or more are subject to an LPC). Finally, while other carriers charge residence customers a 1.5 percent LPC, those carriers may charge a different LPC to their business customers. Verizon MA must be accorded that same pricing flexibility.

Finally, the NCLC’s and ABCD’s claims regarding low-income customers are unfounded. As recognized by the Department, the Lifeline program provides low-income customers with the ability to retain residential telephone service at affordable rates, thereby

advancing the Department's goal of universal service. *See* D.P.U. 89-57 Order, at 4. For example, a Verizon MA Lifeline customer with unlimited local usage would pay \$7.35 per month - an \$18.69 subsidy as compared with a non-Lifeline customer.

As demonstrated in Verizon MA's response to DTE 1-6, if such a Lifeline customer fails to pay his bill for a full year, the late payment charge would average only \$0.10 per month. The fact that Lifeline customers benefit from this program by receiving substantial discounts on their telephone bill does not relieve them in any way of their obligation to pay undisputed telephone charges on a timely basis. Accordingly, Lifeline customers should not be afforded special treatment by exempting them from the residence LPC, as these parties suggest. *See* Verizon MA's Replies to DTE 1-2, 1-3, and 1-6.

CONCLUSION

For the foregoing reasons, the Department should promptly approve Verizon MA's residence Late Payment Charge tariff as filed.

Respectfully submitted,

VERIZON MASSACHUSETTS

Its Attorneys,



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Dated: April 5, 2006